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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ESTATE OF JUDY MILBURN,
Plaintiff,

v.

COLONIAL FREIGHT SYSTEMS, INC., and
DOES 1 to 50, inclusive.
Defendant.

CIVIL ACTION NO. 2:19-cv-233

COMPLAINT
WRONGFUL DEATH

ORIGINAL COMPLAINT AND JURY DEMAND

COMES NOW, Estate of Judy Milburn and heirs, (*hereinafter* "MILBURN"), herein
complaining of Defendant COLONIAL FREIGHT SYSTEMS, INC. ("*hereinafter* "COLONIAL"),
and for cause of action would respectfully show unto the Court the following:

I. JURISDICTION

1. This court has original jurisdiction pursuant to 42 U.S.C. section 1332(a) because the
matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and is
between citizens of different States. MILBURN is a resident of Oklahoma. Defendant COLONIAL is
a corporation formed in Alabama, with its principal place of business in Tennessee.

II. VENUE

COMPLAINT
CIVIL ACTION NO. 2:19-cv-233

3. At all times herein relevant, both PLAINTIFF and MILBURN are/were citizens of the State of Oklahoma.

IV. FACTUAL ALLEGATIONS

14. CRISENBERRY drove distracted, lacked attention to surrounding road conditions, and failed to realize that traffic ahead had come to a stop.

1 15. Due to CRISENBERRY'S failure to maintain proper speed, and failure to keep an assured
2 clear distance between himself and the vehicles in front of him, CRISENBERRY failed to stop his
3 tractor.

4 16. CRISENBERRY collided with numerous vehicles at high rate of speed without hitting his
5 brakes.

6 17. CRISENBERRY and his passenger, MILBURN, were both killed as a result of the
7 collision.

8 18. Judy Milburn was asleep in the sleeping birth at the time of the collision.

9 19. The damages sustained by Plaintiffs were proximately caused by the statutory and
10 common law negligence of Defendant COLONIAL in failing to exercise a reasonable degree of care in
11 hiring, retaining, training, and supervising CRISENBERRY.

12 20. Judy Milburn was not working at the time of the accident.

13 21. Judy Milburn was not in the course and scope of work performed for Defendant
14 Crisenberry or Defendant Colonial Demand.

15 **V. FIRST CLAIM FOR RELIEF**

16 **(Negligence)**

17 22. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set
18 forth herein at length and incorporates all allegations and causes of actions above into this cause of
19 action by reference.

20 23. COLONIAL and their agents, employees, and commercial drivers had a duty to act
21 reasonably in the operation of their tractor trailers, and to ensure that it's driver(s) safely drove and/or
22 operated their commercial vehicles, tractor trailers, and trucks reasonably and prudently to avoid
23 injury to others.

24 24. At the time of the collision, CRISENBERRY while driving for Defendant COLONIAL
25 failed to exercise due care by:

- 26 A. maintaining an unsafe distance from other vehicles;
27 B. keeping an improper lookout;
28 C. travelling at an unreasonable speed given the circumstances;

- D. making an untimely and improper application of his brakes;
- E. exhibiting inadequate driver attention;
- F. driving distracted;
- G. taking improper evasive action to avoid the collision; and
- H. choosing to violate safety rules.

25. The tractor-trailer driven by CRISENBERRY was driven with the permission and at the direction of COLONIAL.

26. The tractor-trailer driven by CRISENBERRY was driven in the course and scope of his employment and agency with COLONIAL.

27. Plaintiffs would show, before a full investigation has been made, that at the time of the collision, CRISENBERRY was grossly and generally negligent under the circumstances then and there existing.

28. At the time of the accident, CRISENBERRY was negligent per se in that he was violating one or more of the statutes of the State of Texas, to include but not be limited to:

- a. Transportation Code Sec 545.062 – Following too closely

29. At all times relevant to this cause of action, CRISENBERRY was subject to and required to obey the minimum safety stands established by the Federal Motor Carrier Safety Regulations (FMCSR) (49 C.F.R. §§ 301 to 399), either directly or as adopted by the Texas Department of Transportation Safety Rules & Regulations.

29. CRISENBERRY will be shown to have violated the state and Federal Motor Carrier Safety Regulations and statutes of Texas which constitutes negligence per se, including but not limited to: 49 C.F.R. § 390 General; 49 C.F.R. § 392 Driving of Commercial Motor Vehicles; and Texas Transportation Code Sec 545.062 – (Following too closely)

30. CRISENBERRY'S negligence, combined and concurring with the negligent acts of COLONIAL, proximately caused the wreck involving MILBURN resulting in her death and damages to PLAINTIFF to be determined at trial.

31. CRISENBERRY owed duties of ordinary care to MILBURN and other motorists and members of the public on the roadway. CRISENBERRY's conduct, as outlined above, breached those

1 duties through various acts and/or omissions, including the following, each of which singularly or in
2 combination with others, constitute acts of negligence that were a direct and proximate cause of the
3 occurrence in question and the resulting injuries or damages set forth herein.

4 32. Defendants' negligence as alleged herein above was a substantial factor and a proximate
5 cause of Plaintiff's injuries as set forth herein.

6 33. Defendants knew, or should have known, that their wrongful conduct would be
7 substantially certain to cause Plaintiff to suffer damages. Defendants' actions were negligent and
8 outrageous, done with reckless disregard of Plaintiff's health and well-being, done in bad faith and
9 with malfeasance, that they would certainly cause Plaintiff to suffer severe emotional distress.

10 34. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered
11 and will continue to suffer special and general damages in an amount according to proof.

12 13 VI. SECOND CAUSE OF ACTION

14 *(Respondeat Superior)*

15 35. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set
16 forth herein at length and incorporates all allegations and causes of actions above into this cause of
17 action by reference.

18 36. At all relevant times, CRISENBERRY was COLONIAL'S agent, employee, servant,
19 and/or independent contractor, driving a commercial vehicle with COLONIAL'S name and logo, and
20 was acting within the course and scope of his employment, under the direct control of COLONIAL,
21 and within the course and scope of his agency or employment. On this basis, COLONIAL listed under
22 this cause of action are vicariously liable for CRISENBERRY'S negligence.

23 37. On this basis, COLONIAL under this cause of action are vicariously liable for
24 CRISENBERRY'S negligence under this doctrine.

25 38. Irrespective of the employment or agency relationship, COLONIAL is an interstate carrier
26 subject to the Federal Motor Carrier Safety Administration Regulations and is, therefore, responsible
27 for the acts of CRISENBERRY.

28

43. As a direct, foreseeable, and proximate result of Defendants' employee, agent, driver (CRISENBERRY) negligent conduct, Plaintiff has suffered and will continue to suffer special and general damages in an amount according to proof.

45. COLONIAL had a duty to act reasonably in hiring and retaining CRISENBERRY, and to adopt and enforce policies, procedures, and rules to ensure that it's driver(s) performed their duties in a safe manner.

1 46. COLONIAL'S conduct demonstrated a conscious disregard of the known risks to
2 MILBURN / PLAINTIFFS and the rest of the public and a breach their duty adopt and enforce
3 policies, procedures, and rules to ensure that it's driver(s) performed their duties in a safe manner.

4 47. As a result of Defendant COLONIAL's breach of its aforementioned duties, Defendants'
5 directly and proximately caused the damages described in causes of action above.

6 48. As a direct, foreseeable, and proximate result of Defendants' negligent conduct, Plaintiff
7 has suffered and will continue to suffer special and general damages in an amount according to proof.

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9 **VIII. THIRD CLAIM FOR RELIEF**
10 **(Negligent Hiring by Defendant COLONIAL)**

11 49. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set
12 forth herein at length.

13 50. Defendant COLONIAL was negligent in the hiring of CRISENBERRY in that Defendant
14 COLONIAL knew, or in the exercise of reasonable care should have known, that CRISENBERRY
15 was unfit or unqualified for a position to safely operate commercial motor vehicles under the control
16 of Defendant COLONIAL. Defendant COLONIAL was further negligent in employing and providing
17 CRISENBERRY with a commercial motor vehicle.

18 51. Defendants breached this duty by failing to exercise of reasonable care in ensuring that
19 CRISENBERRY was fit or qualified for a position to safely operate commercial motor vehicles under
20 the control of Defendant COLONIAL. Defendant COLONIAL was further negligent in employing and
21 providing CRISENBERRY with a commercial motor vehicle.

22 52. Defendants knew, or should have known, that their wrongful conduct would be
23 substantially certain to cause Plaintiff to suffer damages. Defendants' actions were negligent and
24 outrageous, done with reckless disregard of the public and Plaintiff's health and well-being, done in
25 bad faith and with malfeasance, that they would certainly cause Plaintiff to suffer severe emotional
26 distress.

27 53. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered
28 and will continue to suffer special and general damages in an amount according to proof.

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2 **IX. FOURTH CLAIM FOR RELIEF**
3 **(Negligent Training by Defendant COLONIAL)**

4 54. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set
5 forth herein at length.

6 55. Defendant COLONIAL was negligent in the training of CRISENBERRY, in that
7 Defendant COLONIAL knew, or in the exercise of reasonable care should have known, that
8 CRISENBERRY was unfit or unqualified for a position in which he was required to safely operate and
9 drive commercial motor vehicles. Defendant COLONIAL failed to properly train and/or instruct
10 CRISENBERRY for the job he was to perform and for the safe operation and entrustment of a
11 commercial motor vehicle. Defendant COLONIAL failed to instruct or train CRISENBERRY
12 concerning the subject motor vehicle and allowed CRISENBERRY to drive a motor vehicle when it
13 knew or should have known that CRISENBERRY was not capable of or qualified in operating the
14 commercial vehicle properly.

15 56. Defendants breached their duty by such conduct as alleged herein.

16 57. Defendants' negligence as alleged herein above was a substantial factor and a proximate
17 cause of Plaintiff's injuries as set forth herein.

18 58. Defendants knew, or should have known, that their wrongful conduct would be
19 substantially certain to cause Plaintiff to suffer damages. Defendants' actions were negligent and
20 outrageous, done with reckless disregard of Plaintiff's health and well-being, done in bad faith and
21 with malfeasance, that they would certainly cause Plaintiff to suffer severe emotional distress.

22 59. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered
23 and will continue to suffer special and general damages in an amount according to proof.

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25 **X. FIFTH CLAIM FOR RELIEF**
26 **(Negligent Supervision of Defendant COLONIAL)**

27 60. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set
28 forth herein at length.

1 61. Defendant COLONIAL was negligent in the supervision of CRISENBERRY in that
2 Defendant COLONIAL knew, or in the exercise of reasonable care should have known, that
3 CRISENBERRY was unfit or unqualified for a position, which he was required to safely operate a
4 commercial motor vehicle.

5 62. Defendant COLONIAL refused to supervise CRISENBERRY for the job that he was to
6 perform. Defendant COLONIAL refused to supervise CRISENBERRY on the date of the incident in
7 question, and allowed, or refused to prevent, CRISENBERRY from operating Defendant
8 COLONIAL's commercial vehicle in an unsafe manner.

9 63. As a result of the aforementioned negligent conduct, Defendants breached their duty to the
10 public and Plaintiff by allowing and perpetuating such conduct as alleged herein.

11 64. Defendants' negligence as alleged herein above was a substantial factor and a proximate
12 cause of Plaintiff's injuries as set forth herein.

13 65. Defendants knew, or should have known, that their wrongful conduct would be
14 substantially certain to cause Plaintiff to suffer damages. Defendants' actions were negligent and
15 outrageous, done with reckless disregard of Plaintiff's health and well-being, done in bad faith and
16 with malfeasance, that they would certainly cause Plaintiff to suffer severe emotional distress.

17 66. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered
18 and will continue to suffer special and general damages in an amount according to proof.

19 **XI. SIXTH CLAIM FOR RELIEF**

20 **(Negligent Retention of Defendant COLONIAL)**

21 67. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set
22 forth herein at length.

23 68. Defendant COLONIAL was negligent in the retention of CRISENBERRY, in that
24 Defendant COLONIAL knew or in the exercise of reasonable care should have known, that
25 CRISENBERRY was unfit or unqualified for a position for which he was required to safely operate a
26 commercial motor vehicle. Defendant COLONIAL negligently retained CRISENBERRY prior to the
27 date of the incident in question, and allowed, or refused to prevent, CRISENBERRY from operating
28 Defendant COLONIAL's vehicle in an unsafe manner.

1 78. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered
2 and will continue to suffer special and general damages in an amount according to proof.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for damages against Defendant as follows:

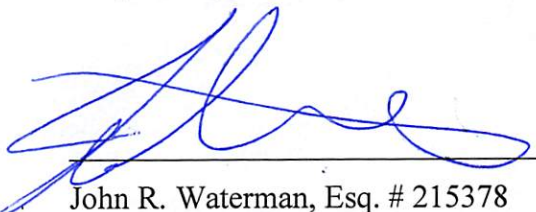
- 5 A. General damages in excess of \$75,000.00 according to proof at trial;
6 B. Special damages in excess of \$75,000.00 according to proof at trial;
7 C. Funeral and Burial Expenses
8 D. Loss of services
9 E. Loss of care guidance, and nurturing;
10 F. loss of love and companionship;
11 G. Lost wages/income;
12 H. Loss of inheritance;
13 I. Pre-judgment and post-judgment interest at the legal rate to the extent allowed
14 under the law until paid.
15 J. Costs of suit herein incurred; and
16 K. For such other and further relief as the court deems just and reasonable.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of
19 Civil Procedure.

20 Dated this 21th Day of June, 2019

21 Respectfully submitted,

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Service of Documents: